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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,637	06/30/2003	Kestutis Patiejunas	MFCP.102769	8490

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SHOOK, HARDY & BACON L.L.P.  
(c/o MICROSOFT CORPORATION)  
INTELLECTUAL PROPERTY DEPARTMENT  
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KANSAS CITY, MO 64108-2613

EXAMINER
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AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2143

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/608,637

Applicant(s)

PATIEJUNAS, KESTUTIS

Examiner

Joseph E. Avellino

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-161 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-161 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-161 are pending in this examination; claims 1, 34, 67, 80, 93, 107, 121, 135, and 149 independent.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 93-98, 102-126, 130-140, 144-161 are rejected under 35 U.S.C. 101 because they recite embodiments of the invention that are not tangible.

With respect to claims 93-98, 102-126, 130-140, and 144-148, exemplary claim 93 recites only software, per se. As claimed, "an interface" can be construed as merely a connection via software. See MPEP 2106 with the newly added interim guidelines regarding inventions which merely recite software components. Correction is required to include some tangible element to these claims (i.e. a hardware component, etc.).

With respect to claims 149-161, this is merely a data object, which is only stored data. A data object is just stored data bits, which is construed as not having any practical application. Correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 80-92, and 135-148 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite "a computer readable medium" however no medium of any kind is disclosed in the specification. Correction is required.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 115 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 115 depends upon claim 14, which does not disclose any method. It is believed that this is a typographical error. For examination purposes, this claim will be construed as depending from claim 114 instead of 14.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-8, 14-16, 18-21, 25-30, 33, 34, 37-41, 47-49, 51-54, 58-63, 66, 67, 70, 71, 73-80, 83, 84, 86-92, 149, 152, 153, and 155-161 are rejected under 35 U.S.C. 102(e) as being anticipated by Buxton (US 2003/0204856).

8. Referring to claim 1, Buxton discloses a system for managing the transmission of distributable content (e.g. abstract), comprising:

a collection engine (i.e. local processing units 106) configured to receive distributable content from at least one content provider (i.e. database server 104 and backup media server 118) (e.g. abstract; Figure 1; p. 1, ¶ 10);

content storage, communicating with the collection engine to store the distributable content (i.e. storage within the local node to store movies) (p. 2, ¶ 19); and

an interface to a second network communicating with a subscriber (i.e. residential gateway or set top box 108), the subscriber selectively receiving the distributable content from the collection storage via the second network (i.e. via the connection between the local node and the set top box) (Figure 5; p. 4, ¶ 34);

9. Referring to claim 4, Buxton discloses the collection engine comprises a DSLAM (i.e. DSL switching unit) (Figure 5, ref. 502).

10. Referring to claim 5, Buxton discloses the second network comprises a DSL connection (Figure 5, ref. 508; p. 6, ¶ 49).

11. Referring to claim 6, Buxton discloses the collection engine comprises a cable head end (i.e. local node 506) (Figure 5; p. 4, ¶ 34).

12. Referring to claim 7, Buxton discloses the second network comprises a cable modem connection (i.e. connection between local node 106 via coaxial cable line to residential gateway 114 which inherently uses a cable modem) (Figure 1).

13. Referring to claim 8, Buxton discloses the collection engine comprises a wireless interface (i.e. wireless switching unit 510 and radio tower 515) (Figure 5; p. 6, ¶ 49-50).

14. Referring to claim 14, Buxton discloses the collection engine comprises a server (i.e. anything which serves anything to anything can be construed as a server).

15. Referring to claim 15, Buxton discloses the second network comprises a LAN or a MAN (i.e. the local node can handle 500 to 1000 homes via cable, which fits the definition of a LAN or a MAN) (p. 4, ¶ 34).

16. Referring to claim 16, Buxton discloses the content storage comprises a database (i.e. any hard disk can be construed as a database since it stores data in a relational manner) (p. 2, ¶ 19).

17. Referring to claims 18 and 19, Buxton discloses the subscriber receives the content at a viewing device (i.e. set top processing unit connected to a television or a residential gateway connected to a TV or a PC) (Figure 5, ref. 505, 514).

18. Referring to claim 20, Buxton discloses that the device comprises local storage (i.e. it is inherent that if data is streamed as is disclosed in Buxton, ¶ 48, then the receiver, such as the set top box or residential gateway must include some local storage to buffer the stream for display to a user) (¶ 48).

19. Claim 21 is rejected for similar reasons as stated above.

20. Referring to claim 25, Buxton discloses the subscriber activates the viewing of the distributable content via a key mechanism (i.e. transaction in order to receive the data such as a pay-per-view situation) (p. 5, ¶ 43-44).

21. Referring to claim 26, Buxton discloses the key mechanism authenticates via the first network (i.e. transaction processing server authorizes the user to receive the multimedia data) (p. 5, ¶ 43-44).

22. Referring to claims 27 and 28, Buxton discloses the distributable content is digitally encoded video (i.e. encrypted video) (p. 1, ¶ 12).

23. Referring to claim 29, Buxton discloses the subscriber subscribes to the content provider (i.e. authorized to receive the content data) (p. 5, ¶ 43-44).

24. Referring to claim 30, Buxton discloses the subscriber receives the content on a pay-per-use basis (i.e. pay-per-view video-on-demand systems) (p. 4, ¶ 32; p. 5, ¶ 43-44).

25. Referring to claim 33, Buxton discloses the collection engine receives the content on a usage demand basis (i.e. anticipation of requests by the user-subscribers) (pp. 3-4, ¶ 31, 34-37).

26. Claims 34, 37-41, 47-49, 51-54, 58-63, 66, 67, 70, 71, 73-80, 83, 84, 86-92, 149, 152, 153, and 155-161 are rejected for similar reasons as stated above.

### ***Claim Rejections - 35 USC § 103***

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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Claims 2, 3, 9-13, 17, 31, 32, 35, 36, 42-46, 50, 64, 65, 68, 69, 72, 81, 82, 85, 150, 151, and 154 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton.

28. Referring to claims 2 and 3, Buxton discloses the invention substantively as described in claim 1. Buxton does not specifically disclose the first network is the Internet and a backbone link, however using the Internet backbone is a well known use to connect a central server with regional local nodes. By this rationale, "Official Notice" is taken that both the concept and advantages of using the Internet backbone instead of a proprietary fiber line is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Buxton to utilize the Internet backbone in order to reduce the costs associated with the upkeep of a fiber line to all the local nodes, instead of a simple network access card connectable to the Internet.

29. Referring to claim 9, Buxton discloses the invention substantively as described in claim 9. Buxton does not disclose that the wireless network operates on a standard described in 802.11a, b, or g, however these are widely known standards for wireless networking and one of ordinary skill in the art would find it obvious to utilize these standards. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for an 802.11 a, b, or g interface for the wireless network of Buxton is well known and expected in the art. It would have been obvious to one of

ordinary skill in the art to modify the teaching of Buxton since Buxton does not specifically recite any standard to the RF wireless communication system used in Figure 5, this would provide one of ordinary skill in the art to search the art for standards in RF networking technology, eventually finding these standards known for their interoperability and ease of use.

30. Referring to claims 10-13, Buxton discloses the embodiment of a cable modem and head end as described in claim 1. Buxton does not specifically disclose that the local node can be a central telephone office or an optical head end and the second network can be a dial-up modem connection or a fiber optic connection, however these mediums and communication devices are well known for carrying data over links to subscribers. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for the use of a central telephone office or an optical head end is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Buxton to include a central telephone office or an optical head end since Buxton does disclose the use of DSL connections over twisted pair as well as wireless networking embodiments of the invention (§§ 49-50). This would provide sufficient motivation to utilize the invention over other types of networks, eventually finding the well known telephone and optical networks widely known and used.

31. Referring to claim 17, Buxton discloses the invention substantively as described in claim 1. Buxton does not specifically disclose receiving the distributable content at scheduled times, however it is well known in the networking art to download data at periods when network utilization is low, such as at night or on the weekends. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for pushing content at specific times is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Buxton to include scheduled downloads in order to reduce the overall congestion when the network is highly utilized, thereby reducing the need for increased bandwidth over the links.

32. Referring to claim 31, Buxton discloses the invention substantively as described in claim 1. Buxton does not specifically disclose that there is more than one content provider, however it has been held obvious to duplicate parts for multiple effects, see *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 (7th Cir. 1977). By this rationale, it would have been obvious to one of ordinary skill in the art to modify the system of Buxton to provide multiple content providers, thereby provide multiple redundant content providers to ensure reliability to the particular content.

33. Claims 32, 35, 36, 42-46, 50, 64, 65, 68, 69, 72, 81, 82, 85, 150, 151, and 154 are rejected for similar reasons as stated above.

Claims 22 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bear et al. (US 2003/0131075) (hereinafter Bear).

34. Referring to claim 22, Buxton discloses the invention substantively as described in claim 21. Buxton does not specifically disclose that the content stored in the storage expires after a predetermined time. In analogous art, Bear discloses another content storage system which discloses a system which can implement a service instantiation which allows a video-on-demand movie to be available for a 24 hour period (§ 38). When taken in context with Buxton, this would provide one of ordinary skill in the art that the data would be deleted or expired in some way such that the user is unable to view it. It would have been obvious to one of ordinary skill in the art to combine the teaching of Bear with Buxton in order to control the viewing of the video, thereby requiring users to pay again in order to watch the movie outside of the 24 hour window.

35. Claim 55 is rejected for similar reasons as stated above.

Claims 23, 24, 56, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton in view of Simec et al. (US 2004/0010717) (hereinafter Simec).

36. Referring to claims 23 and 24, Buxton discloses the invention substantively as described in claim 21. Buxton does not specifically disclose the content is selectively

controlled via digital rights management. In analogous art, Simec discloses another video-on-demand system which discloses the use of DRM to prevent unauthorized reproduction or usage (p. 2, ¶ 22). It would have been obvious to one of ordinary skill in the art to combine the teaching of Buxton with Simec in order to prevent the unauthorized usage of the movies stored on the subscriber devices, thereby preventing hacking and BORE (Break once, read everywhere) copying, thereby ensuring the proper payment is received.

37. Claims 56, and 57 are rejected for similar reasons as stated above.

Claims 93-99, 102-113, 116-127, 130-141, and 144-148 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton in view of Breen et al. (USPN 7,155,674) (hereinafter Breen).

38. Referring to claim 93, Buxton discloses the invention substantively as described in claim above. Buxton does not specifically disclose the use of a user interface configured to permit the subscriber to receive the distributable content. In analogous art, Breen discloses another video on demand system (e.g. abstract) which discloses the use of a GUI to permit the subscriber to receive the distributable content (Figures 11A-12B; ¶ 45-47). It would have been obvious to one of ordinary skill in the art to combine the GUI system of Breen with the digital distribution system of Buxton in order

to allow the subscribers of Buxton the efficient use of the GUI management controls offered by Breen to order and download videos.

39. Claims 94 and 95 are rejected for similar reasons as stated above.

40. Referring to claim 96, Buxton in view of Breen disclose the invention substantively as described in claim 93. Buxton-Breen do not specifically disclose downloading the content as a background task, however background tasks are well known and expected in the art to allow the user the ability to do something else while the computer is working on downloading the data to the subscriber. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing the downloading of data as a background task is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Buxton-Breen to incorporate the use of background task downloading in order to allow the user to watch other television programs while the video on demand is being downloaded.

41. Claims 97-99, 102-108 are rejected for similar reasons as stated above.

42. Referring to claim 109, Buxton-Breen discloses the invention substantively as described in claim 107. Buxton-Breen further disclose the use of receiving the content at selectable times (see rejections above). Buxton-Breen do not specifically disclose

the GUI comprises options for this download, however options with respect to download times are well known in the art in order to customize the selection to the user's wishes. By this rationale, "Official Notice" is taken that the concept and advantages of allowing the user to select the download time is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Buxton-Breen in order to allow the user the ability to customize the viewing according to the user's wishes, thereby providing customizability to the system.

43. Claims 110-113, 116-127, 130-141, and 144-148 are rejected for similar reasons as stated above.

Claims 100, 101, 114, 115, 128, 129, 142, and 143 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buxton in view of Breen in view of Simec.

44. Referring to claims 100 and 101, Buxton-Breen discloses the invention substantively as described in claim 99. Buxton does not specifically disclose the content is selectively controlled via digital rights management. In analogous art, Simec discloses another video-on-demand system which discloses the use of DRM to prevent unauthorized reproduction or usage (p. 2, ¶ 22). It would have been obvious to one of ordinary skill in the art to combine the teaching of Buxton with Simec in order to prevent the unauthorized usage of the movies stored on the subscriber devices, thereby

preventing hacking and BORE (Break once, read everywhere) copying, thereby ensuring the proper payment is received.

45. Claims 114, 115, 128, 129, 142, and 143 are rejected for similar reasons as stated above.

### ***Conclusion***

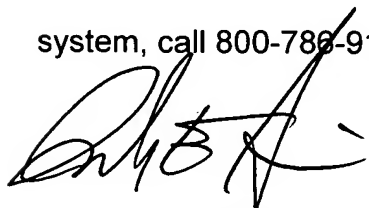
46. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

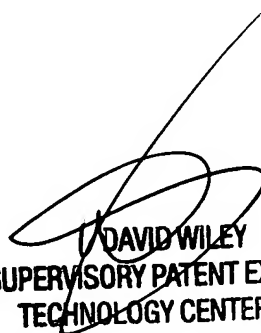
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Joseph E. Avellino, Examiner  
December 28, 2006



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